of the Federal Court which have a bearing on this matter.

In the case of *Vasudevan* v. *T. Damodaran & Anor*,[1] Abdoolcader J., in reviewing the authorities, enunciated the principles relating to the exercise of the court's power to dismiss an action for want of prosecution as follows (at page 151):

"We would specifically refer to the propositions enunciated by Salmon L.J. in *Allen* (at page 268) to the effect *inter alia* in relation to the inordinate delay being inexcusable that as a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable, and again with regard to the question of serious prejudice to defendants by the delay, that this may be prejudice at the trial of the issue between themselves and the plaintiff or between each other or between themselves and third parties, and that as a rule the longer the delay, the greater the likelihood of serious prejudice at the trial. The decision of the English Court of Appeal in *Biss* v. *Lambeth, Southwark* and *Lewisham Area Health Authority* (Teaching) (distinguishing *Birkett*) on a point under the English Limitation Acts, 1939 to 1975 not material for the purposes of the present appeal, is to the effect that in determining whether the delay after the writ has been issued is substantial, the court has to consider whether the delay has prejudiced both a fair trial and the defendants, and in considering the prejudice to the defendants, the delay after the issue of the writ has to be considered against the delay before issue, and whether such delay has substantially prejudiced the defendants.

We would draw particular attention to the judgement of Lord Denning M.R., stating (at page 389) that prejudice to a defendant by a plaintiff's delay is not limited to the death or disappearance of witnesses or their fading memories or in the loss or destruction of records since there is much prejudice to a defendant in having an action hanging over his head indefinitely, not knowing when it is going to be brought to trial."

In the second case of *Toh Hock Thye & Ors.* v. *Toh Chwee Biow*[2], Salleh Abas F.J., delivering the judgement of the Federal Court, re-affirmed the above principles in the following words at p. 153:

"Counsel for both sides cited to us many authorities including *Vasudevan* v. *Damodaran & Anor.*, a recent decision of a different panel of this court. We accept the statement of the law stated by Abdoolcader J. who wrote the judgement of this court as being correct. We add that not unmindful of the difficulties experienced by the Court of Appeal in England in *Biss* v. *Lambeth* and the Chancery Division in *Joyce* v. *Joyce* in applying the House of Lord's decision in *Birkett* v. *James* we propose for the purpose of this appeal to state the principle which would guide us in deciding this appeal to be thus – that the plaintiff's action is liable to be dismissed for want of prosecution when the court is satisfied that (1) the plaintiff's default has been intentional and contumelious or (2) the plaintiff or his lawyer is guilty of such inordinate and inexcusable delay that the defendant has been prejudiced by it."

Mr. Bernatt for the plaintiffs, has, however, submitted that if there has been any delay it is only with effect from May 18, 1979 when the Practice Note was issued and that, as I understand him, this delay is not inordinate or inexcusable as he was not aware of the Practice Note and that in any event only one of the defendants' principal witnesses is not traceable whilst the death of the other, who was the managing director of the defendant company, would make no difference to the trial as, ostensibly, the defendants could be represented by the new managing director. I am unable to accept that the lack of awareness on the part of solicitors, without more, is sufficient justification to render the delay excusable. I am also of the view that the defence has been prejudiced by this delay. In my judgement, having regard to the sequence of documents filed in this case as listed above, nothing would have been done by the solicitors for the plaintiffs but for the action by the defendants' solicitors rousing them from their slumber. It seems to me to be a clear case of inordinate and inexcusable delay on the part of the plaintiffs' solicitors. Accordingly, this action must be dismissed for want of prosecution with costs of the application and of defending the suit to the defendants.

Action dismissed.

Solicitors: *Shook Lin & Bok; Baharuddin, Bernatt Tan & Ker.*

KULDIP SINGH & ANOR. v. LEMBAGA LETRIK NEGARA & ANOR.

[O.C.J. (Wan Hamzah J.) November 1. 1982]
[Kuala Lumpur – Civil Suit No. 2638 of 1976]

Land Law – Sale and Purchase Agreement – Cheque of $46,000 by purchasers sent to their solicitor as stakeholders – Purchasers' solicitor absconded with money – Whether purchasers should bear loss.

Land Law – "Stakeholders" – Meaning of.

The plaintiffs in this case sought to purchase a house from the second defendant. The plaintiffs instructed their solicitor, Brar, to draw a sale and purchase agreement. The said agreement was executed by the parties on May 26, 1976. The plaintiffs sought to finance the purchase partly by means of a loan from their employer, the first

defendant. According to the standard procedure for application for housing loan the plaintiffs were required to appoint a solicitor for the purpose of the transfer of the house and the cheque for the payment of the loan would be issued in the name of the solicitor, and the plaintiffs were required to submit the name of the solicitor to the first defendant. The plaintiffs gave the name of Kirpal Singh Brar & Co. as the solicitor appointed. At that time the property was still charged to Chung Khiaw Bank Ltd. for $35,000. It was provided in the agreement that the amount shall be paid by the plaintiffs' solicitor direct to the Bank in order to obtain a discharge of the bank. The first defendant approved a loan of $46,000 to the plaintiffs and sent a cheque of that amount to Kirpal Singh Brar & Co. The said cheque was cleared and in June 1976 the second defendant gave possession of the house to the plaintiffs.

The said solicitor disappeared with the $46,000. The first defendant had thereafter been making monthly deductions from the plaintiffs' salaries to recover the loan of $46,000.

The plaintiffs sought for a declaration that, *inter alia*, the said solicitor received the sum of $46,000 as stakeholder, and alternatively, as trustee and/or agent for the first defendant. In the premise, the plaintiffs claimed that they did not owe the first defendant the sum of $46,000.

The second defendant sought to have the sale agreement rescinded, and she was prepared to refund $16,000 which she had received.

Held: (1) a stakeholder is a person who receives money and holds it *in medio* pending the outcome of a future event;

(2) Brar ceased to hold the money as stakeholder on the signing of the transfer form by parties on the solicitor feeling that the transfer could be registered free from encumbrances;

(3) at the time when Brar appropriated the $46,000 he was no longer holding it in the capacity of stakeholder but in the capacity of solicitor for the plaintiffs, because upon the occurrence of the aforesaid events, he as solicitor for the plaintiffs was supposed to pay a part of the money to the bank and the balance to the second defendant;

(4) since Brar had appropriated the money at a time when he was holding it as solicitor and agent for the plaintiffs, it was not the first defendant but the plaintiffs who should bear the loss. The loan chould be treated as having been paid to the plaintiffs and the first defendant was entitled under the loan agreement to make monthly deductions from the plaintiffs' salaries to recover the loan;

(5) the second defendant would be allowed to rescind the sale agreement. The plaintiffs should therefore deliver vacant possession of the house to the second defendant within 3 months, and pay to her rent at $400 per month from now till delivery of vacant possession. The second defendant would also be awarded $27,000 in respect of the loss of rents which she suffered. She should also refund $16,000 to the plaintiffs.

Cases referred to:

(1) *Burt* v. *Claude Cousins & Co.* [1971] 2 Q.B.D. 426 @ p. 435.

(2) *Sorrell* v. *Finch* [1976] 2 W.L.R. 833.

CIVIL SUIT.

C.C. Phipps for the plaintiffs.
David Lingam for the first defendant.
P. Royan for the second defendant.

Cur. Adv. Vult.

Wan Hamzah J.: The Second Defendant inserted an advertisement in a newspaper for the sale of her house. On seeing the advertisement the Plaintiffs became interested to buy it. After verbally agreeing with the Second Defendant to buy it for $62,000 the Plaintiffs took the Second Defendant and her husband to see Mr. Kirpal Singh Brar (to whom I shall refer as Brar), the sole proprietor of the solicitors' firm of Kirpal Singh Brar & Co. The Plaintiffs instructed Brar to draw a sale and purchase agreement. On May 25, 1976 the Plaintiffs and the Second Defendant executed the sale and purchase agreement drawn by Brar. The Plaintiffs planned to finance the purchase partly by means of a loan from their employer, Lembaga Letrik Negara, the First Defendant. A few days before the agreement was executed the Plaintiffs had sent an application to the First Defendant for a joint loan. According to the standard procedure for application for housing loan the Plaintiffs were required to appoint a solicitor for the purpose of the transfer of the house and the cheque for the payment of the loan would be issued in the name of the solicitor, and the Plaintiffs were required to submit the name of the solicitor to the First Defendant. Accordingly the First Plaintiff on his own behalf and on behalf of the Second Plaintiff wrote to the First Defendant and gave the name of Kirpal Singh Brar & Co. as the solicitor appointed.

At the time of the execution of the agreement the house had been charged to Chung Khiaw Bank Limited and the outstanding balance due at that time to the bank under the charge is stated in the agreement to be about $35,000, and it is provided in the agreement that the amount shall be paid by the Plaintiffs' solicitor direct to the Chung Khiaw

Bank Limited within thirty days of the date of the agreement in order to obtain a discharge of the charge. On May 25, 1976 the First Defendant sent a letter to Kirpal Singh Brar & Co. as follows:—

" 25hb Mei, 1976.

Kirpal Singh Brar & Co.,
Bilik 504 Tkt. 5,
Bangunan Lee Yan Lian,
Jalan Tun Perak,
Kuala Lumpur.

Tuan,

Permohonan Pinjaman Perumahan
Bersama Untuk Membeli Tanah dan
Rumah Siap – Lot PT 6498
Damansara Utama, Kuala Lumpur.

Encik Kuldip Singh dan isterinya kedua-duanya pekerja Lembaga telah membuat permohonan bersama untuk pinjaman wang perumahan dari Lembaga bagi membeli harta tersebut di atas.

2. Permohonan mereka telah diproseskan dan Lembaga bersedia untuk mengeluarkan sebanyak $46,000/- kepada tuan tertakluk kepada syarat-syarat berikut:—

(a) Tuan akan mengambil tindakan untuk memindahmilik harta kepada nama Encik Kuldip Singh dan isterinya dan memajukan hakmilik ke pejabat ini selepas pemindahan milik tersebut telah didaftarkan di dalam masa 3 bulan dari tarikh tuan menerima bayaran.

(b) Hakmilik tersebut hendaklah bebas daripada sebarang bebanan.

(c) Sekiranya hakmilik ini tidak dipindahmilik dan dihantar ke pejabat ini sebagaimana yang dinyatakan di atas, tuan hendaklah membayar balik wang yang telah dibayar oleh Lembaga.

3. Sila beritahu saya samada tuan bersetuju dengan syarat-syarat tersebut di atas. Apabila diterima persetujuan dari tuan, peraturan akan dibuat untuk mengeluarkan wang ini kepada tuan.

Yang benar,
t.t.
(Mahmud bin Hj. Zainuddin)
b.b. PEGAWAI KAKITANGAN (PERKHIDMATAN),
Lembaga Letrik Negara. "

On May 26, 1976 Kirpal Singh Brar & Co. sent a reply as follows:—

" 26th May, 1976.

Pegawai Kakitangan,
(Perkhidmatan)
Lembaga Letrik Negara,
Jalan Bungsar,
KUALA LUMPUR.

Dear Sir,

We refer to your letter dated Mei 25, 1976 and have taken instructions from our clients to write to you as follows.

We accept the terms of the loan and agree to comply with them. We have been retained to carry out the terms and undertake to do so.

Kindly let us have the sum so that we can take the necessary steps.

Yours faithfully,
t.t.
c.c. Clients. "

The First Defendant approved a loan of $46,000 to the Plaintiffs, and sent a cheque of that amount to Kirpal Singh Brar & Co. together with a letter dated June 3, 1976 as follows:—

" 3 JUN 1976

Kirpal Singh Brar & Co.,
Bilik 504, Tkt. 5,
Bangunan Lee Yan Lian,
Jalan Tun Perak,
Kuala Lumpur.

Tuan, BERDAFTAR

PINJAMAN WANG PERUMAHAN DILULUSKAN KEPADA Encik Kuldip Singh & Isteri PEK. No. 8854 & 9054 UNTUK BELI TANAH DAN RUMAH SIAP

Berhubung dengan perkara yang tersebut di atas, bersama-sama ini dikirimkan sekeping cek No. C343095 bertarikh June 1, 76 dan berharga $46,000/- sebagai pinjaman kepada Encik Kuldip Singh dan isterinya untuk menyelesaikan harga harta iaitu rumah dan tanah di Lot PT 6498, HS(D) 41952 Mukim Sungei Buloh, Daerah Kuala Lumpur.

2. Untuk perhatian tuan, wang ini hendaklah dibayar kepada pihak yang berkenaan hanya selepas Borang Pindahmilik ditandatangani oleh penjual harta tersebut dan pembelinya iaitu pembeli yang disebutkan di atas tadi. Bayaran bolehlah dilaksanakan setelah tuan betul-betul pasti bahawa pemindahan hakmilik ini dapat didaftarkan tanpa sebarang apa-apa kesulitan.

3. Setelah didaftarkan nama pemohon ke dalam geran tanah, sila kirimkan ke pejabat ini geran tanah berkenaan untuk tindakan selanjutnya.

4. Sila akui penerimaan cek pembayaran ini dan sila hantarkan resit pembayaran tersebut ke pejabat ini dengan segera.

5. Rujukan tuan: KSB/t/65/76 ada berkaitan.

Yang benar,
t.t.

(Mahmud bin Hj. Zainuddin)
b.p. PEGAWAI KAKITANGAN (PERKHIDMATAN),

s.k: (1) Encik Kuldip Singh,
No. Pek. 8854.

Melalui: Ketua Jurutera
(Pembahagian) LLN.,
Ibu Pejabat.

(ii) Puan Kuldip Singh,
No. Pek. 9054.

Melalui: Setiausaha,
LLN., Ubu Pejabat.

s.k: Akautan Kanan (Lejar AM),
Ibu Pejabat (Tkt.9).

s.k: LLN. 14/2/1649
(Sila berjumpa peguam tuan dengan segera)."

The cheque of $46,000 sent by the First Defendant to Kirpal Singh Brar & Co. was cleared. Some time in June 1976 the Second Defendant gave possession of the house to the Plaintiffs and since then the Plaintiffs have been occupying it till now. On June 14, 1976 Kirpal Singh Brar & Co. wrote a letter to another firm of solicitors enquiring whether the Second Defendant had paid in full the purchase price of the house to the company from whom she had bought it. This is the last letter signed by Brar which is produced in this case. After June 14, 1976 Brar disappeared. It is common ground that Brar has left this country and appropriated the $46,000 sent by the First Defendant to his firm. The First Defendant has been making monthly deductions from the Plaintiffs' salaries to recover the loan of $46,000. The Plaintiffs pray:—

(i) for a declaration that Kirpal Singh Brar & Co. was receiving the sum of $46,000 as stakeholder, and alternatively, as trustee and/or agent for the First Defendant, and in the premise, the Plaintiffs did not owe the First Defendant the sum of $46,000 or at all;

(ii) for an order that the First Defendant do refund all sums deducted against the Plaintiffs' salaries towards satisfaction of the sum of $46,000 if prayer (i) is decided in favour of the Plaintiffs;

(iii) alternatively, for a declaration that the said Kirpal Singh Brar & Co. received the said sum of $46,000 from the First Defendant towards satisfaction of the outstanding bank loan obtained from Chung Khiaw Bank Ltd., Pudu Branch, Kuala Lumpur, and towards the balance of the purchase price of the said property for and on behalf and as stakeholder and alternatively, as trustee and/or agent for the Second Defendant at the material time pursuant to the said agreement;

(iv) if prayer (iii) is decided in favour of the Plaintiffs, for an order that the Second Defendant do discharge the charge on the said property now being charged to Chung Khiaw Bank Ltd., Pudu Branch, Kuala Lumpur, and further that the Second Defendant do execute a registrable transfer of the said property to the Plaintiffs forthwith.

The question is: What is a stakeholder? A stakeholder is a person who receives money and holds it *in medio* pending the outcome of a future event. In *Burt* v. *Claude Cousins & Co.*[1] Lord Denning M.R. stated:

> "If an estate agent or a solicitor, being duly authorised in that behalf, receives a deposit "as stakeholder", he is under a duty to hold it *in medio* pending the outcome of a future event. He does not hold it as agent for the vendor nor as agent for the purchaser. He holds it as trustee for both to await the event ... Until the event is known it is his duty to keep it in his own hands."

In that case Lord Denning gave a dissenting judgment in the Court of Appeal. Subsequently the majority judgment in that case was overruled by the House of Lords in *Sorrell* v. *Finch*[2]. In view of the contents of the letters dated May 25, 1976, May 26, 1976 and June 3, 1976 reproduced above, I am of opinion that Brar received the cheque of $46,000 as a stakeholder. But Brar was holding the money as a stakeholder not all the time but only until the occurrence of the specific events stated in paragraph 2 of the letter of June 3, 1976. The events were:—

(a) signing of the transfer form by the Second Defendant and the Plaintiffs, and

(b) the solicitor feeling certain that the transfer could be registered free from encumbrances.

In fact event (a) did occur, and event (b) should be treated as having occurred. The transfer form (AB17 – 20) was signed by the Second Defendant and the Plaintiffs and Brar knew this because the parties signed it in his presence. There is nothing in the evidence to show that the transfer could not be registered free from encumbrances if Brar was willing to do what he was supposed to do, i.e. to send sufficient amount out of the $46,000 to Chung Khiaw Bank Limited to obtain discharge of the encumbrance on the house. On

the occurrence of the events (a) and (b) Brar ceased to hold the money as stakeholder, and at the time when he appropriated it he was no longer holding it in the capacity of stakeholder but in the capacity of solicitor for the Plaintiffs, because upon the occurrence of the events (a) and (b) he as solicitor for the Plaintiffs was supposed to pay a part of the money to Chung Khiaw Bank Limited and the balance to the Second Defendant. It is clear from clause 4 of the sale and purchase agreement that he was to make the payments in the capacity of solicitor for the Plaintiffs. The relevant part of clause 4 reads—

"4. The amount owing to Chung Khiaw Bank Limited i.e. $35,000 (or whatever lesser sum due) shall be paid by the *purchasers' solicitors* direct to Chung Khiaw Bank Limited within thirty days from date hereof to obtain a discharge of the said charge from the Chung Khiaw Bank Limited. Any amount of money in excess of $35,000 shall be retained by the solicitors and paid to the vendor."

I emphasise the words *"purchasers' solicitors"* to stress the point that the payments to the Bank and to the vendor (the Second Defendant) were to be made by the purchasers' solicitors on behalf of the purchasers. Since Brar had appropriated the money at a time when he was holding it as solicitor and agent for the Plaintiffs, it is not the First Defendant but the Plaintiffs who should bear the loss. The loan should be treated as having been paid to the Plaintiffs and the First Defendant is entitled under the loan agreement to make monthly deductions from the Plaintiffs' salaries to recover the loan.

At no time was Brar holding any part of the money as solicitor or agent for the Second Defendant. In clause 3 of the sale and purchase agreement it is provided that the signed instrument of transfer "shall be kept by the purchasers' solicitors who shall also act for the vendor". The only occasion when Brar was acting as solicitor for the Second Defendant was when he was keeping the signed instrument of transfer, and he was acting for the Second Defendant for that purpose only and for no other purposes. If it was intended that Kirpal Singh Brar & Co. should act for the Second Defendant generally and for other purposes, this would have been stated in a separate clause by itself, instead of the fact of acting for the vendor being stated in clause 3 which deals specifically with the matter of instrument of transfer only. It was not the Second Defendant who had engaged and appointed Kirpal Singh Brar & Co. It was the Plaintiffs who did so. There is no doubt that Brar was solicitor for the Plaintiffs. On cross-examination the First Plaintiff admitted more than once that he appointed Brar as his solicitor and that Brar was his solicitor. Although the First Plaintiff testified that at a meeting before the agreement was signed the Second Defendant and her husband requested Brar to act for them, there is no other evidence to support this allegation or to show that Brar was acting for the Second Defendant generally. The file of Kirpal Singh Brar & Co. relating to the sale and purchase of the house has the name of the First Plaintiff written on its front cover as client. Nowhere on the file is the Second Defendant referred to as client.

In *Sorrell* v. *Finch*[2] Lord Edmund-Davies repeated what he had stated earlier in another case as follows:—

"The just solution of the problem of which of two innocent parties should suffer should depend very largely (and possibly conclusively) upon what rights could have been asserted by each of them in respect of the money in the (estate) agent's (i.e. the stakeholder's) hands at all material times."

So in the present case if, for example, the Second Defendant refused to sign the transfer, the First Defendant would have the right to call back the money from the stakeholder, i.e. Kirpal Singh Brar & Co.; and if Brar had appropriated the money after the Second Defendant had refused to sign the transfer, the First Defendant would have to bear the loss. But the First Defendant had no right to claim the money in the hand of Kirpal Singh Brar & Co. after the Plaintiffs and the Second Defendant had signed the transfer and it became clear that the transfer could be registered free from encumbrances after redemption in accordance with the sale and purchase agreement; and Kirpal Singh Brar & Co. was then holding the money as agent for the Plaintiffs for the purpose of making payments in accordance with the sale and purchase agreement.

I dismiss the Plaintiffs' claim. Costs to the Defendants.

I shall now deal with the Second Defendant's counterclaim. There is no doubt that she has not received the price of the house in full but $16,000 only. There is no doubt that there was breach of the agreement on the part of the Plaintiffs in that they failed to cause the charge to be discharged and to pay the balance of the price to the Second Defendant. The Second Defendant asks for an order that the sale and purchase agreement be

rescinded, and she is prepared to refund to the Plaintiffs the sum of $16,000 which she has received. By letter dated November 11, 1976 she asked the Plaintiffs to deliver vacant possession of the property not later than December 12, 1976. The Plaintiffs are still occupying it. The Second Defendant asks for an order for damages against the Plaintiffs for their continued occupation after December 15, 1976. The Second Defendant testified that the rental of the house as at the time of the trial of this case (i.e. November, 1979) should be $400 per month. She said that she arrived at this figure on the basis of the rental which her aunt received in respect of a house of the same type. The Second Defendant's husband (D.W.3) testified that the rent of a similar house in the same area in 1976 was between $300 and $350 per month, because he had a friend who rented out a house at $350 per month. He also testified that as at the time of the trial the rent of the property should be about $400 per month. There was no evidence on rental adduced on behalf of the Plaintiffs except that the First Plaintiff testified that the rent of that type of house should be about $250 per month in 1976, but he did not state the basis of his estimate. I accept the Defence evidence and accordingly fix the rent at $300 per month from 1976 to 1978 and $400 per month from 1979 till now. Therefore the amount of rents lost by the Second Defendant from June 1976 to now is estimated at $27,700.

On the Second Defendant's counterclaim I grant order of rescission as prayed, and I further order that the Plaintiffs should deliver vacant possession of the house to the Second Defendant within the three months, and pay to her rent at $400 per month from now till delivery of vacant possession. I award to her damages in the sum of $27,700 in respect of the loss of rents which she has suffered. I also award to her costs. I order that she should refund $16,000 to the Plaintiffs.

I should point out that in the English version of the letter dated June 3, 1976 included in the Agreed Bundle of Documents the word "kesulitan" in paragraph 2 is translated as "encumbrances". I think the literal meaning of "Kesulitan" is "problem" or "difficulty". If it was so translated, such translation would not make any difference to the outcome of this case. I think it would make the Defendants' case even stronger.

Order accordingly.

Solicitors: *Ong Chin Beng & Partners; Kadir, Tan & Ramli; Shook Lin & Bok.*

CHAN SWEE KIN v. TANG WOOI YIN

[O.C.J. (Edgar Joseph Jr. J.) October 15, November 2 & 8; & November 9, 1982]

[Penang – Civil Suit No. 345 of 1982]

Landlord & Tenant – Controlled premises – Possession – Claim for – Defendant locked out of premises – Whether there was a tenancy agreement – Whether defendant was a trespasser – Cross-applications for interim or interlocutory injunctions.

Practice & Procedure – Landlord & Tenant – Claim for possession – Cross-applications for interim or interlocutory injunctions.

There were two cross-applications in this case for interim or interlocutory injunctions, one by the plaintiff and the other by the defendant arising out of an action for possession of certain premises comprised in the ground floor of a shophouse at No. 60 Pitt Street, Penang.

The plaintiff alleged that the defendant was a trespasser having gone into occupation of the premises for purposes of setting up a dental practice while negotiations for a tenancy were in progress but without her consent. The defendant on the other hand relied on an oral tenancy agreement.

Held: (1) the *status quo* should be preserved. Without in any way prejudicing the issues raised by the pleadings, the court was satisfied that the defendant had complied with all the requirements laid down by Lord Diplock in *American Cyanamid Co.* v. *Ethicon Ltd.*[4];

(2) there was a serious question to be tried as to whether the defendant occupied the premises as a tenant or trespasser;

(3) since possession of controlled premises was the subject of the suit, damages would not be an adequate remedy for either the plaintiff or the defendant;

(4) a minor breach of the Street, Drainage & Building Act 1974 should not debar the defendant from the interim relief he sought especially when other considerations have been found in his favour;

(5) the plaintiff's application was refused whilst that of the defendant was granted. An injunction was ordered to prevent the plaintiff, her servants or agents from stopping him having access thereto.

Cases referred to:

(1) *Walsh* v. *Lonsdale* (1882) 21 Ch.D. 9 C.A.
(2) *Manchester Corpn.* v. *Connolly & Ors.* [1970] Ch. D. 420.
(3) *Wah Loong (Jelapang) Tin Mine Sdn. Bhd.* v. *Chai Ngen Yiok* [1975] 2 M.L.J. 109.
(4) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] A.C. 396.
(5) *Luganda* v. *Service Hotels Ltd.* [1969] 2 Ch.D. 209, 220.
(6) *Argyll (Duchess)* v. *Argyll (Duke)* [1967] Ch. 302.
(7) *Ford* v. *Foster* (1872) L.R. 7 Ch. App. 611.